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In the

Supreme Court of the United States

OCTOBER TERM, 1921

No. 315 30

KING COUNTY, WASHINGTON,
Appellant

vs.

SEATTLE SCHOOL DISTRICT NO. 1,
a Municipal Corporation, *Appellee*

BRIEF OF APPELLEE

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In the

Supreme Court of the United States

OCTOBER TERM, 1921

No. 841

KING COUNTY, WASHINGTON, *Appellant*

vs.

SEATTLE SCHOOL DISTRICT NO. 1, a Municipal Corporation, *Appellee*

BRIEF OF APPELLEE

SUPPLEMENTAL STATEMENT OF THE CASE

The controversy in this case is based solely on what occurred in King County, Washington for seven successive years which is clearly shown in the following table:

Year	Total Received from State	Apportioned to Road and Bridge Fund	Apportioned to School Fund
1909	$ 542.34	$ 542.34	Nothing
1910	1,334.34	1,334.34	Nothing
1911	2,762.14	2,762.14	Nothing
1912	4,799.13	4,799.13	Nothing
1913	3,256.95	3,256.95	Nothing
1914	2,544.88	2,544.88	Nothing
1915	1,617.03	1,617.03	Nothing
	$16,856.81	$16,856.81	Nothing

By the decree from which this appeal has been taken the balance has been restored to the above account by awarding to Seattle School District its proper proportion of the fund for those years, on the theory that Congress intended an equal division of the fund between schools and roads.

It is worthy of note that appellant's main argument in the Court of Appeals as well as in the District Court has been entirely omitted from appellant's brief. It was to the effect that the acts of Congress created a public trust or charity and that the Attorney General *only* was authorized to sue in the courts for a breach of the trust. To make this point counsel cited numerous authorities

showing the distinction between public and private trusts. The Court of Appeals while holding that these acts of Congress did not fall strictly within the definition of either a public or private trust, yet, even considered in the light of a public trust, it was unnecessary in a case like the present, for the Attorney General to institute the suit. From a long line of authorities the court selected two cases in support of its position. In view of the fact that this question has been eliminated from the trial in this court we shall omit extensive argument presented in the Court of Appeals.

As we understand the contention of counsel, now made in this court, the Acts of Congress are to be regarded neither in the light of a public or private trust but only as an ordinary appropriation of funds by Congress.

ARGUMENT

Reduced to its last analysis the question in this case is this: Is there sufficient vitality in the Acts of Congress of March 4, 1907 and May 23, 1908, to prevent County Commissioners in the State of Washington from excluding public schools from

participation in the benefits flowing from these acts? While the District Court and the Circuit Court of Appeals have answered the question in the affirmative and the end attained appears to be reasonable and just, the question is still open to the test of equitable principles.

I

THE INTENTION OF CONGRESS

At the foundation of this case lies the intent of Congress. To keep in mind the language used in the two acts under consideration we here repeat the act of March 4, 1907, which gives directions for the expenditure of the fund:

> "* * * And provided, further, that ten per centum of all money received from each forest reserve during any fiscal year, including the year ending June 30, 1906, shall be paid at the end thereof by the Secretary of the Treasury to the State or Territory in which said reserve is situated, to be expended as the State or Territorial Legislature may prescribe, for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated. Provided, further, that when any forest reserve is in more than one state or territory or county, the distributive share to

each from the proceeds of said reserve shall be proportional to its area therein, and provided, further, that there shall not be paid to any state or territory for any county, an amount equal to more than forty per centum of the total income of such county from all other sources. * * *" (34 Stat. L. 1270.)

Disregarding for the moment the explicit directions contained in the latter part of this act, what was the attitude of Congress with respect to the public schools and roads? Did Congress intend to leave it to the states to decide whether one or the other of these public objects should receive all of the benefits from the fund? It is worth while to consider the course of legislation by Congress, for more than a century, to catch the spirit of the many provisions made by the government for public education in the states. Beginning with the Ordinance of 1785 we find that the practice of setting apart section 16 of every township of public lands for the maintenance of public schools was provided for in this early enactment. The appropriation of public lands for that object became a fundamental principle by the Ordinance of 1787 which settled the terms of compact between the people and states of the Northwestern Territory, and the original states, which was to be unalterable except by consent. The

latter ordinance ordained that "schools and the means of education should be forever encouraged."

As successive states were admitted into the Union there was a provision in the several compacts that section 16 of each township should be granted to the states for the purpose of maintaining the public schools. Later the grant was enlarged to include section 36 in each township. Still later Congress increased its gifts to the several states by providing that 5 per cent of the proceeds of the public lands should be paid to the states for the support of the common schools. The culmination of this general course of legislation is illustrated in the act of April 19, 1864, admitting Nebraska as a state into the Union. (Stat. L. 13, p. 49, sec. 12.) Then follows the act of 1907, now under consideration, which provides for an additional fund for both schools and roads. To further indicate the importance which the government attached to the public schools, Congress in the various enabling acts creating the several states, required the people of those states to assume certain solemn obligations. They are illustrated in the enabling act providing for the admission of the states of Washington, and other states, approved February 22, 1889 (25 Stat. L. 676). In section 4 we read:

"And said conventions shall provide by ordinances irrevocable without the consent of the United States and the people of said states.
* * *

"*Fourth*, that provision shall be made for the establishment and maintenance of systems of public schools which shall be open to all the children of said states and free from sectarian control."

We may note here the manner in which the State of Washington met this obligation by quoting from the Constitution:

"It is the paramount duty of the state to make ample provision for the education of all children residing within its borders without distinction or preference on account of race, color, caste or sex.

"The Legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools and such high schools, normal schools and technical schools as may hereafter be established." (Const. of Washington, Art. IX, Sections 1 and 2.)

Following the command of the Constitution the Legislature enacted a School Code providing for a complete and uniform system of public schools, to which reference will be made later.

But Congress did not stop with gifts for the common schools but has, from time to time, made grants of lands and funds for universities, agricultural colleges, normal schools, scientific schools and other public educational institutions. Various acts of Congress granting lands or setting aside funds for educational purposes in the several states are illustrated in the following which are taken from a large number of acts of that character:

3 Stat. L. 545, Sec. 6 (Sub. sec. 3).
5 Stat. L. 788, Sec. 1.
5 Stat. L. 790, Sec. 5 (Sub. sec. 5).
4 Stat. L. 494 (Missouri).
9 Stat. L. 178 (Wis.).
11 Stat. L. 167, Sec. 5 (Sub. sec. 5).
11 State L. 383, Sec. 4 (Sub. sec. 5).
25 Stat. L. 676, 680 (Wash. N. D. etc.).

II

PUBLIC ROADS

While Congress was bestowing gifts upon the states in aid of education it did not entirely forget public roads, canals and other improvements of that character. One of the earliest acts making such provision is found in the act of March 6, 1820, admitting the state of Michigan to the Union provid-

ing for a gift to the State of 5 per cent of the proceeds of the sale of public lands for the purpose of constructing roads and canals. (3 Stat. L. p. 547.) A similar provision is found in later acts of Congress and it may be said that Congress has shown a commendable interest in public improvements of that character. But Congressional *solicitude* has never at any time been exhibited for the furtherance of such improvements, as it has been shown in a marked degree for the extension of education among all the people. We may then fairly say that if Congress had any intention at all to direct the application of the Forest Reserve fund it intended to further education in the counties where the forest reserves were situated, as well as to benefit roads located therein.

Appellant contends, as we understand it, that while those charged with the administration of the fund would not be permitted to use it for any purpose other than the two purposes named, they would be permitted to use the fund for *either*, at the expense of the other. If Congress had meant that the fund might be used for either purpose it would have said so as it did in an Act applying to eight states where there was a provision that the United States shall,

"Pay to the states of Missouri, Michigan, Florida, Iowa, Wisconsin, Minnesota, Oregon and Nevada, 5 per cent of the net proceeds of the sales of all public lands lying within their limits for the purpose of education, *or* of making public roads and improvements. * * *" (U. S. Revised Statutes 1878, p. 728.) (Italics ours.)

III

ACTS OF CONGRESS CREATE A TRUST

Counsel have at some length argued that neither a public nor private trust was created by the Acts of Congress. We do not think that question is important. If the Acts provide for a fiduciary relation between those receiving and those entitled to receive the fund, a trust of some kind was created. Text writers have divided trusts into numerous classes and sub-classes. (Perry on Trusts, 6th Ed., secs. 18 to 27.) This classification is merely for convenience and not for the purpose of excluding everything in the nature of a trust which does not appear to fall exactly in any class. So we may not be disturbed by the cases defining public and private trusts and the attempt to distinguish the differences between them. That Congress understood there was a trust implied, if not directly

stated, in its several grants to the states in aid of schools, is indicated in the act of March 2, 1867, creating a Department of Education. In section 4 of that act after providing for a Commissioner of Education the act provides:

> "In the first report made by the Commissioner of Education under this act there shall be presented a statement of the several grants of land made by Congress to promote education and the manner in which these several trusts have been managed, the amount of funds arising therefrom and the annual proceeds of the same as far as the same can be determined." (14 Stat. L. 434.)

From a large number of special acts of Congress recognizing this trust relationship we select the following for illustration:

9 Stat. L., page 281, in which the state of Alabama was permitted to sell land granted for *internal improvements* and to apply the proceeds to *schools.*

9 Stat. L., page 42, in which the State of Arkansas was permitted to sell 72 sections of land granted for a *seminary of learning* and to apply the proceeds to the *common schools.*

12 Stat. L., page 536. The conditions contained in a prior act granting to the state of Iowa five sec-

tions of land for completing and erecting public buildings were released, and the state was permitted to dispose of the land *as it might deem for the best interests of the state.*

4 Stat. L., page 305, in which the State of Illinois was permitted to sell lands which had been granted for the use and support of "*Ohio Saline*" and to devote the proceeds "of such sale to such objects as the State Legislature may by law hereafter direct."

22 Stat. L., page 484, amends a prior act granting lands to the states for agricultural colleges and changes the terms on which the proceeds of the sale may be invested and used.

Chapter 2934, Act of March 4, 1907, in which the State of Oklahoma was permitted to convey to the Board of Education of the city of Chandler, section 16, a school section.

41 Stat. L., page 233, permits the regents of the State University of Washington, for the purpose of securing land suitable for a demonstration forest and to be used for a forest experiment station, to exchange lands granted for *University purposes and for state penal and reformatory institutions*, for *school land* of equal value.

The courts have likewise declared grants of this character to be trusts. In the case of *American Emigrant Co. v. Wright County*, 97 U. S. 339, this court had under consideration a grant of the United States of swamp lands, for the purpose of draining and improving such lands. The court pronounced the grant a trust and in summing up the case at the end of the opinion says:

> "But the impression made upon us by the whole testimony is that the officers and citizens of the County were in gross ignorance of the nature and value of what they were selling; that the Emigrant Company on the other hand were well informed in regard to both and withheld this information unfairly from the officers of the county. * * * That the fact that all parties knew they were dealing with a *trust fund devoted by the donor to a specific purpose* demanded the utmost good faith on the part of the purchaser,—so far from this there is a provision for a diversion of the funds to other purposes, a gross inadequacy of consideration and a successful speculation at the expense of the rights of the public." (Italics ours.)

In the State of Missouri it was held that the Federal grant of land for the use of the public schools was in the nature of a trust.

Butler v. Chariton County Court, 13 Mo. 112.

IV

A FEDERAL QUESTION IS INVOLVED

Appellant questions the jurisdiction of the Federal Court on the ground that this controversy involves only a state law. It will be observed the Act of the Washington Legislature of 1907, in its main provisions, merely repeats the language of the Act of Congress of the same year. What does that language mean? Did it mean the same to the State Legislature as it did to Congress? What would a State Court say it meant? Would the State courts in the different states agree on the interpretation of this language? What latitude is allowed the states, if any, in diverting the fund? The answer to these questions must, in the last analysis, depend upon the intent of Congress in using the language which created the trust. To determine this question it is important to consider the history of other congressional legislation of the same general nature.

Smith v. Townsend, 148 U. S. 490 (37 L. ed. 533).

Mobile & O. R. Co. v. Tennessee, 153 U. S. 486 (38 L. ed. 793).

Appellant has insisted that the language of the Act implies authority on the part of officers dis-

bursing the fund to ignore the public schools entirely. If that interpretation should be adopted by the court the ruling would extinguish the School District's rights in this case and would determine the appeal. We are, therefore, within the Federal jurisdiction under the rule of those cases which have gone the farthest in denying jurisdiction. Among the cases cited by counsel under this head is *Oregon v. Three Sisters Irr. Co.*, 158 Fed. 346. The State of Oregon had entered into a contract with the defendant to construct irrigation works under the Carey Act. Plaintiff alleged that the contract complied in all respects with the act of Congress and that the defendant had violated the contract. Upon removal to the Federal Court it was claimed a Federal question was not involved. The court says (p. 350):

> "True, the especial grievance complained of is the alleged breach of the contract, and *it might be that the ultimate issue would simply resolve itself into one of fact* as to whether the defendant has complied with the stipulations of the agreement. But such stipulations are essentially obligations to comply with the provisions of the Carey Act, and the suit is nevertheless one touching the right or privilege of the complainant accorded under the act, and the act itself is certainly involved by the litiga-

tion. *It is hardly possible that the state can maintain its rights and privileges thus granted without in some way* calling to its aid some, if not many, of the provisions of the act, and drawing into controversy the proper interpretation and rendering of such provisions." (Italics ours.)

The case of *St. Paul M. & M. Ry. Co. v. St. Paul & N. P. Ry. Co.*, 68 Fed. 2, (C. C. A.) involved transactions which primarily rested upon the validity of state laws only. The federal grant to the state was the groundwork upon which the state had carried out a plan of railroad construction. The bill of complaint only indirectly called for the construction of a federal act. The court says (p. 11):

> "It is obvious that it (the plaintiff) derives its right to sue solely from the act passed by the legislature of the State of Minnesota on March 1, 1877, the material provisions of which act have been embodied in the foregoing statement."

And again on pages 13 and 14:

> "If it appears, in any aspect which the case may assume, that the right of recovery may depend upon a construction of those (federal) acts, and if the right to recover so far as it turns on the construction of federal statutes is not merely a colorable claim, but rests upon

a reasonable foundation then a federal question is involved which is adequate to confer jurisdiction. * * * If a case is commenced originally in the circuit court, and, by a fair construction of the complaint, it appears that the plaintiff predicates his right to relief on the meaning or effect of a law of the United States, and the claim is made in good faith, so that there is a real instead of a merely colorable controversy, then jurisdiction over the case exists, even though it may appear that the right to the same relief is asserted on another ground, that does not involve the consideration of a federal question. In concluding the discussion on this branch of the case, it is proper to add that we do not concur in the view that the case is one of federal cognizance merely because the title to the lands in controversy is derived from the United States. The bill shows very conclusively that both parties claim under the State of Minnesota, that the title to the state is not challenged, but is conceded to be well founded under the granting acts. *The questions at issue all grow out of the manner in which the state dealt with the lands* after it acquired the same from the general government." (Italics ours.)

One of the first questions which the trial court was called upon to decide in this case was whether the act of Congress had the effect of permitting the States to use the fund in any way and for any pur-

poses they chose. The terms of the Act itself strongly suggest that Congress had a very definite purpose which it was determined to accomplish. Otherwise, why did Congress provide that the fund should be used for the benefit of schools and roads only *in the counties where the Forest Reserves were situated?* And why did it still further provide that the schools and roads of such a county should receive only the proportion of the fund which represented sales of timber *from that county?* We think the Congressional intention is clear. The creation of a Federal Forest Reserve has the effect of depriving the county in which it is located of a part of its taxable resources, and when the timber is removed that portion of the county's native resources is forever lost. To compensate, in a measure, Congress returns a substantial portion of the proceeds of the sale of the timber, to the very county which has sustained the loss, and in exact proportion to that loss. The latter very explicit requirement of the Act is a plain indication that Congress was not dealing broadly with the several states containing Forest Reserves, but had in mind a very definite plan for dealing with particular communities. Then there is another question of intent. Did Congress intend that the schools and

roads should share the gift equally? The Trial Court and the Circuit Court of Appeals after examining numerous Acts of Congress and taking into consideration the general rule applied by the courts to gifts, wills and deeds, came to the conclusion that Congress intended an equal division. This rule is not questioned by counsel and is supported by abundant authority which may be illustrated in:

In re McConnell, 197 Fed. 438, 441.
Markoe v. Wakeman, 107, Ill. 251, 261.
Gerting v. Wells, 103 Md. 624.
In re Conner's Will, 39 N. Y. Supp. 900.
Guerin v. Guerin, 110 N. E. 402 (Ill.)
Harris v. Keasbey, 53 Atl. 555 (N. J. Ch.)

V

IT IS NOT SIMPLY A MATTER BETWEEN TWO SOVEREIGNTIES

It is asserted that the disposition of the Forest Reserve Fund is a matter which concerns only the United States and the State of Washington—two sovereignties. Seven cases are cited in support of this contention as follows:

Barrett v. Brooks, 21 Iowa 144.

Stearns v .Minnesota, ex rel Marr, 45 L. Ed. 162.

Alabama v. Schmidt, 58 L. ed. 555.

American Emigrant Co. v. County of Adams, 25 L. ed. 563.

Sulzer v. Smith, 5 Alaska 338.

American Emigrant Co. v. Wright County, 24 L. ed. 912.

United States v. Louisiana, 127 U. S. 182, 32 L. ed. 66.

Inasmuch as the decisions from Iowa and Alaska were based on the decisions of this court they need not be separately considered. Counsel might also have added the following:

Cooper v. Roberts, 18 How. 173 (15 L. ed. 338.)

Mills County v. Burlington & M. R. Co., 107 U. S. 557, 27 L. ed. 578.

Hagar v. Reclamation District, 111 U. S. 701, 28 L. ed. 569.

This, we believe, completes the list of cases decided by this court which may be fairly said to have any bearing on the point raised.

Cooper v. Roberts, supra was first in point of time. It was an action in ejectment involving the title to a school section which had been sold and conveyed to the plaintiff by the State of Michigan. The defendant claimed the state had no authority

to sell the land under the original grant of school land to the state, contending that special permission to sell should have been secured from Congress. The court recognizes the fact that certain states had applied to Congress for permission to sell school lands and that Congress had been in the habit of granting such requests, but the court holds that it was unnecessary to secure Congressional consent and proceeds (page 341):

> "The trusts created by these compacts relate to a subject certainly of universal interest, but of municipal concern, over which the power of the State is plenary and exclusive. In the present instance, the grant is to the State directly, *without limitation of its power*, though there is a sacred obligation imposed on its public faith. We think it was competent to Michigan to sell the school reservations without the consent of Congress." (Italics ours.)

Alabama v. Schmidt, supra, (58 L. ed. 555) was a case of the same type. In that case the state sought to recover possession of a school section which had been in the adverse possession of the defendant more than twenty years, which, according to the Statute of Limitations of the state, made his title good. On behalf of the state it was claimed that the land had been impressed by the government with a trust which prevented the state from dis-

posing of it. The court cites *Cooper v. Roberts, supra*, to the effect that the state might have *sold* the land under the grant and cites *Northern Pacific R. R. Co. v. Ely*, 197 U. S. 1, 8, to the effect that title under a statute of limitations is equivalent to a conveyance by deed.

These cases go no further than to hold that states may sell school lands and convey a perfect *title* unburdened by the trust created by the acts of Congress.

In *American Emigrant Co. v. Wright County, supra* (24 L. ed. 912), this court for the first time had under consideration the "Swamp Land" grant of the United States to the several states. This grant was contained in the Act of September 28, 1850, (9 Stat. L. 519) and by it all swamp and overflowed lands were granted "to enable the state to construct the necessary levees and drains to reclaim them." Following the grant, which was absolute in terms, was this proviso:

> "*Provided*, that the proceeds of said lands whether from sale or by direct appropriation in kind shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid."

There was a further provision in the act which is described by the court as follows (page 914):

> "The statute made it the duty of the Secretary of the Interior to make out accurate lists and plats of the lands described as aforesaid, and transmit the same to the Governors of the States; and at the request of the Governors to cause patents to be issued, which patents should *vest the fee simple to said lands in the States, subject to the disposal of their respective Legislatures.*" (Italics ours.)

The State of Iowa by an act of its legislature had conveyed all swamp lands included in the grant to the several counties in which the lands were situated, with an injunction that the lands, or their proceeds, should be devoted to the reclamation of swamp lands and if, when this was accomplished anything remained, to building of roads, bridges, etc. By a subsequent act counties were permitted to use these lands or their proceeds for public buildings and various public improvements and to accomplish these purposes the counties were authorized to sell the lands. Wright County had sold certain swamp lands to the Emigrant Company and brought this suit to set aside the sale and deed on the grounds that the terms of the original government grant had been violated and that fraud had been practiced

by the Emigrant Company in securing title to the lands. This court sustained both contentions of the county and affirmed a decree setting aside the entire transaction.

American Emigrant Co. v. Adams County,supra, (25 L. ed. 563), involved the same act of Congress and the same acts of the State Legislature. The case differed from the Wright County case in that no fraud had been shown on the part of the Emigrant Company and the decision turned on the proper construction to be given to the Federal grant of swamp lands to the state. After referring to the Wright County case the court says:

> "Our first view was, that this trust was so explicit and controlling as to invalidate the scheme finally devised by the Legislature of Iowa for the disposal of the land, and under which the contract in question was made. But on more mature reflection, after hearing additional argument, we are satisfied that such a result did not necessarily follow."

The court then refers to the acts of the state legislature and continues:

> "The argument against the validity of the scheme is, that it effects a diversion of the proceeds of the lands from the objects and purposes of the congressional grant. These were

declared to be to enable the State to reclaim the lands by means of levees and drains. The proviso of the 2d section of the Act of Congress declared that the proceeds of the lands, whether from sale or direct appropriation in kind, should be applied exclusively, as far as necessary, to these purposes. This language implies that the State was to *have the full power of disposition of the lands;* and only gives direction as to the application of the proceeds, and of this applicatioin only *'as far as necessary'* to secure the object specified. It is very questionable whether the security for the application of the proceeds thus pointed out does not rest upon the good faith of the State, and whether the State may not exercise its discretion in that behalf without being liable to be called to account, and without affecting the titles to the lands disposed of. At all events, it would seem that Congress alone has the power to enforce the conditions of the grant, either *by a revocation thereof* or other suitable action, in a clear case of violation of the conditions. And as the application of the proceeds to the named objects is only prescribed 'as far as necessary,' room is left for the exercise by the State of a large discretion as to the extent of the necessity. In the present case it is not shown by allegations in the bill, or otherwise (if such a showing would be admissible), that any necessity existed for devoting the proceeds of the lands in question to the purposes of drainage." (Italics ours.)

We have quoted freely from this case because it has been invariably cited in the later decisions. It will be noted that the court brings out clearly two features in the Act of Congress which had not been given consideration in the Wright County case. *First*, that the State was to have full power of disposition of the lands. *Second*, that the proceeds need only be applied to reclamation "as far as necessary" to secure the object specified. In other words it was left to the State to determine how far it was necessary to use the lands, or the proceeds, for the purpose. In this connection we quote from the latest "swamp land" case decided by this court:

United States v. Louisiana, supra, (32 L. ed. 66.) Speaking of the phrase "as far as necessary" the court says on page 70:

> "Under the Act of 1850 the swamp lands are to be conveyed to the State as an absolute gift, with a direction that their proceeds shall be applied exclusively, as far as necessary, to the purpose of reclaiming the lands. The judgment of the State as to the necessity is paramount, and any application of the proceeds by the State to any other object is to be taken as the *declaration of its judgment* that the application of the proceeds to the reclamation of the lands is not necessary." (Italics ours.)

This case has been stressed by appellant because of certain other expressions used by the court. The case however is easily distinguishable from the case at bar by the fact that the gift which the government had promised to the State of Louisiana had not yet been delivered. It was still in the possession of the government. The State was indebted to the United States and the court permitted the government to retain the fund which had been promised but not delivered to the State, as a set-off against the amount which the State was owing. Nothing short of a complete and unconditional delivery is sufficient to constitute a valid gift and until delivery the gift is inchoate and revocable.

Basket v. Hassell 107 U. S. 602, 27 L. ed. 500.

Bowen v. Kutzner, 167 Fed. 281, 297 C. C .A.

But even upon the theory of a completed gift the case is unlike the one at bar for the reason that the gift in the Louisiana case was to the State as a whole, whereas in this case the gift is directed to certain chosen localities, and for specific reasons, as we have already shown.

Mills County v. Burlington & M. R. Co., supra, (27 L. ed. 578), was another case from Iowa. Mills County under a permissive act of the State Legis-

lature had agreed to convey swamp lands to the rail road company to aid construction of a railroad in the County. The case was practically identical in principle with *Amercian Emigrant Co. v. Adams County, supra.*

In *Hagar v. Reclamation District, supra,* (28 L. ed. 569), the rule announced in the Mills County case was merely restated.

In *Stearns v. Minnesota ex rel Marr, supra,* (45 L. ed. 162), the question to be decided was the constitutional right of the State to tax railroad property. Incidentally, it was claimed a federal question was involved by reason of a contract between the state and the company for the conveyance of swamp lands. The right of the state to so contract was affirmed on the authority of *American Emigrant Co. v. Adams County, supra.*

We have now cited all the known cases decided by this court which are supposed to justify the acts of the County Commissioners of King County in the case at bar. The net result may be thus stated. *First,* Congressional grants of this kind create trusts but the trust provisions are not fastened upon the granted lands in such a manner as to bind one purchasing from the State. *Second,* if the grant

allows the state to use the fund in one way or another, at its discretion, and this privilege has been abused, Congress alone can interfere.

In some of the swamp land cases we find the expression used that a violation of the trust was a question for Congress, as it plainly was. Until Congress changed the terms of the grant so as to eliminate the phrase "as far as necessary" even the government was powerless to interfere with the States' discretion.

VI

GOOD FAITH OF THE STATE

The terms "Good Faith of the State" and "Honor of the State" are used in some of the cases. These expressions might indicate that States possessed a higher degree of honor or could be trusted to a greater degree than individuals. The cases where States have been sued directly by the United States, or by sister States, show conclusively that there is another reason for the immunity of States from certain classes of litigation. We cite the following:

South Dakota v. N. Carolina, 48 L. ed. 448.
United States v. Texas, 36 L. ed. 285.
United States v. Michigan, 47 L. ed. 1103.
New Jersey v. New York, 8 L. ed. 127.

Kansas v. Colorado, 46 L. ed. 838.

Virginia v. W. Virginia, 51 L. ed. 1068, 1080.

Missouri v. Illinois, 45 L. ed. 497.

Without attempting to analyze these cases we cite them to show,

First, that states are said to be immune from suits like the present not because they are presumed to possess a higher degree of honor than individuals nor,

Second, because there is any lack of power in the Federal courts to enter judgments and decrees aganst them (except as limited by the 11th Amendment) but,

Third, because a money judgment cannot be enforced against a sovereign state. Therefore, any suit calling for such a judgment must depend for its final fruition upon the voluntary action of the State and therefore rests simply upon honor.

Fourth, when the judgment of the court can act upon something tangible such as land (in boundary disputes) the courts have full power not only to render, but also to execute, their judgments.

Southern Oregon Company v. United States, 241 Fed. 16 (C. C. A.) is a case which throws light up-

on our claim that the Government is interested in grants of this character and that their requirements may be enforced. That case involved a grant of land to the State of Oregon to aid in the construction of a military wagon road and required the land to be sold in small tracts at $2.50 per acre. The State had turned the land over to a private corporation which had constructed the road but had violated the requirement that the land be sold in small tracts and at not to exceed $2.50 per acre. It was held that while the primary purpose of the gift was to aid the State in the enterprise of constructing the road there was a secondary purpose clearly shown by the act of Congress to induce actual settlement of the land. Although the road had been completed for more than forty years the court held that the government was in a position to insist upon the performance of the secondary purpose of the grant. At the trial of the case in the District Court (225 Fed. 560) the defendant contended that the disposition of the grant was a matter which rested upon the good faith of the State of Oregon and could not be questioned, citing *Mills County v. Railroad Co., supra,* and other similar cases. The court refused to apply the doctrine of the above cases and it is worthy of note that when the case was tried

in the Court of Appeals the court made no mention of this point and it appears to have been abandoned by counsel representing the Southern Oregon Company. That case bears a further resemblance to the case at bar in that the State had passed on to its grantee the obligation to carry out all requirements of the Congressional grant.

VII

THIS IS NOT A SUIT AGAINST THE STATE

We may admit that had the state diverted the trust fund to a purpose foreign to the grant, even the government would be obliged to rely upon the honor of the state to restore the fund, for the above reasons. But the state did not divert the fund. On the contrary it sent it on its way to accomplish the exact purposes named in the Acts of Congress. The State has already shown its good faith and it only remains to follow the fund into the hands of those who have received it, and with knowledge of the terms of the trust, have diverted it from the use intended. Those dealing with trust funds in that way may be required to account.

Smith v. Ayer, 101 U. S. 320 (25 L. ed. 955).

Union Pacific R. R. Co. v. McAlpine, 129 U. S. 305 (32 L. ed. 673).

Mechanic's Bank v. Seton, 1 Peters 299, 309.

United States v. Carter, 217 U. S. 286.

As we are not dealing with the state the question of immunity cannot arise. The act of the State of Washington which transferred the fund to the several counties required a distribution of the fund in accordance with the directions of Congress. King County received the fund, which is in controversy in this case, and became responsible for its proper application.

Maryland Casualty Co. v. Washington Nat. Bank, 92 Wash. 497, 501 and cases cited.

VIII

APPROPRIATIONS

We had not supposed anyone would question the necessity of a Congressional appropriation to release funds from the Treasury of the United States. We concede that these funds never would have reached the states but for the Permanent Appropriation Acts cited by counsel. But these were not the ordinary current appropriations of Congress to

be expended by government departments and officials. They were gifts, as much so as if 25 per cent of the timber land itself had been conveyed in trust for the same purpose.

Under this head counsel have endeavored to show that if the rule applicable to gifts were applied to certain itemized appropriations of Congress, the officer receiving them would be required to divide the fund equally among the several items. In the first place such appropriations are not gifts—they are mere governmental expenditures. A government appropriation ordinarily goes to a department, or officer, having charge of some particular branch of the service. The items of such appropriation would all relate to that department. It is a matter of common knowledge, however, that public schools are under the management of boards having nothing to do with the roads, and likewise that County Commissioners, whose chief duties are to maintain roads and bridges, have no direction over school affairs. The controversy in this case arose, and has been maintained, because of the widely separated duties of School District officers and County Commissioners. "Public schools" and "public roads" cannot be likened to departmental items in an appropriation bill.

Legislative Power Was Not Delegated to the County Commissioners

Counsel have asserted that under the act of the state legislature the state delegated to county commissioners the power to determine what should be done with the fund. The language of the Act does not require such a construction, but if it did, the attempted delegation of the power would be void.

Coquard v. Chariton Co., 14 Fed. 203.

Lake Shore etc. R. R. Co. v. Hutchins, 37 Ohio State 282.

Singleton v. Scott, 11 Iowa 589.

Gale v. Kalamazoo, 23 Mich. 344.

The legislature had already provided the state with an elaborate School Code and all the things deemed essential and beneficial to the schools were included in that code. The only way the County Commissioners could legally expend the fund for the benefit of the schools was by placing it in the school treasury where it would automatically benefit every school in King County.

The County Commissioners already had full charge and direction of the public road system under laws then existing. The legislature had there-

fore, provided machinery for carrying out the will of Congress, but, unfortunately, County Commissioners in certain counties have insisted upon appropriating the whole amount of the gift entrusted to them.

IX

POWERS OF SCHOOL DIRECTORS IN WASHINGTON

Counsel have made some general, and we think confusing, statements, about the provisions of the School Code of the State of Washington. Counsel cite (without quoting) sections 4720, 4722, 4724, 4898, 4904, 4906, 4952, 4970, 4973, 4978, 4979 and 5097 of Pierce's Code of 1922, and put this question:

> "To which of these, County School District, County Superintendent's Office, County School Library, Union High Schools, or common School Districts does the Act of Congress apply?" (Appellant's brief, p. 29.)

Had counsel quoted the above sections in full they would have furnished an answer, like this: All school property and funds (when they reach the county treasurer) belong to the several school

districts and are under the control of school directors, who alone become responsible for their safekeeping and expenditure.

Washington's school system has assigned different functions to its different officers and boards. Without attempting to set these out in detail we call special attention to the function of school districts and school district directors. In the first school code enacted at the time of the admission of Washington as a state there was the following provision in relation to school districts:

> "Sec. 18. The term 'school district,' as used in this act, is declared to mean the territory under the jurisdiction of a single school board, designated as 'board of directors,' and shall be organized in form and manner as hereinafter provided, and shall be known as district No. ----------, ---------- county: *Provided*, That all school districts now existing as shown by the records of the county superintendents, are hereby recognized as legally organized districts." (Session Laws of Washington, 1889, p. 361.)

Section 4906 Pierce's Washington Code 1922, provides as follows:

> "Sec. 4906. A school district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes, and in that name and style may sue and be

sued, purchase, hold and sell such personal and real estate, and enter into such obligations as are authorized by law; and the title to all school buildings or other property, real or personal, owned by any such school district shall, upon the organization of a district under the provisions of this act, vest immediately in the new district, and the board of directors of such school district shall have exclusive control of the same for all purposes herein contemplated."

Section 4984 of the same code provides as follows:

> "Sec. 4984. The board of directors of each school district shall have custody of all school property belonging to the district, and shall have power, in the name of the district, to convey by deed all the interest of their district in or to any school house or lot directed to be sold by vote of the district and all conveyances of real estate made to the district shall vest title in the district; said board, in the name of the district, *shall have power to transact all business necessary for maintaining school and protecting the rights of the district.*" (Italics ours.)

Section 4979 of the same code contains the general powers of school directors. It is of such length we will not attempt to quote it. The Supreme Court of Washington has recently decided that school districts are mere "arms of the state" for administering its school systems. In *Howard v. Tacoma*

School District, 88 Wash. 167, 170, the court says:

> "1. Unlike cities and towns, school districts, though corporate entities and classed as municipal corporations, are essentially only *quasi* municipal corporations. State ex rel. School Dist. No. 24 v. Grimes, 7 Wash. 270, 34 Pac. 836. They are mere *arms of the state* for the administration of its school system. Practically all of their functions are therefore governmental." (Italics ours.)

Under the Washington School Code the State Superintendent and County Superintendents are clothed with certain powers of supervision, principally over the educational work. But they have no statutory right to institute legal proceedings as representatives of the public school system nor of any part of it.

If we have shown that Congress had any intention of directing the purposes for which, and the localities where, this substantial trust fund should be expended, the decree of the District Court is in full accord with the principles of equity applicable to trusts of this character.

Respectfully submitted,

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No. [redacted]30

Supreme Court of the United States

OCTOBER TERM, 1921.

KING COUNTY, WASHINGTON,
Appellant,

vs.

SEATTLE SCHOOL DISTRICT NO. 1,
a Municipal Corporation,
Appellee.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

APPELLANT'S REPLY BRIEF

MALCOLM DOUGLAS,
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HOWARD A. HANSON,
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APPELLANT'S REPLY BRIEF

ARGUMENT.

Counsel for appellee in their brief (p. 2) have inadvertently, no doubt, misstated our position in the lower courts, thereby implying a change of front on our part. We have always maintained that no private trust or public charity is involved in this case, also that no public trust is established; but that, if it be so held, then it is a strictly public trust, personal to the originating sovereign.

With respect to the reference (p. 2) that we

maintained that the Attorney General alone was authorized to sue, that argument was addressed to cases dealing with public charities. Confusion of terms results where reference is made to Attorney General cases involving public acts. *State ex rel. Atty. Gen'l. v. Seattle Gas & Elec. Co.*, 28 Wash. 488, 68 Pac. 946, 70 Pac. 114, illustrates one phase, the court holding that under the local statute the *Prosecuting Attorney*, not the Attorney General, was the necessary party to institute *quo warranto* proceedings to test the defendant's right to occupy public streets in Seattle under the local gas franchise.

The next class of cases is illustrated by

People v. Ingersoll, 58 N. Y. 14, Book XII N. Y. C. C. Appeals Reports, p. 390;

Atty. Gen'l. v. Garner (1907), 2 K. B. Div. 480,

cited by the Circuit Court of Appeals in its opinion (Tr. p. 48). In *People v. Ingersoll*, the county had sold general obligation bonds and obtained the money, a part of which was disbursed on false and fraudulent vouchers. It was held that title to the money was in the county and hence the Attorney General could not maintain the action. In *Atty. Gen'l. v. Garner*, the right of pasturing stock on certain lands was held to be a private property right vested in the Parish Council, under the English Local Government Act, for the invasion of

which the Attorney General could not maintain an action.

Both of these cases turned upon *ownership* of the money and property rights involved. As was said in *People v. Ingersoll*, 58 N. Y., 14 C. C. of Appeals Reports, Book XII, p. 390:

> "Of course, the action ought to be maintained by the party who is regarded as the technical *owner* of the money, and the party so regarded in the law is the party to maintain the action." (Italics ours.)

Here, neither Federal nor State Act turns the money over to the School District, and, accordingly the cases relied on by the Court below are inapposite. Nevertheless the principle of the Attorney General cases such as

> *Jenkins v. Berry* (Ky.), 83 S. W. 594;
> *Atty. Gen'l. v. Clark*, 45 N. E. 183;
> *Jackson v. Wendell Phillips*, 96 Mass. 539;
> *Stearns v. Newport Hospital* (R. I.), 62 Atl. 132,

does apply to cases of public charities as we contended below and to strictly public matters as in the *Seattle Gas & Electric Co.* case *supra* (except that under the local law the prosecuting attorney is the necessary party). But it does not apply to litigation arising over property or property rights of a local municipal corporation or political subdivision of the state.

We have not advanced views in this court con-

trary to those expressed below. Since the Circuit Court of Appeals so plainly recognized that the case was not one of a private trust or public charity, we thought it unnecessary to press this phase of the argument. However, as counsel have referred to it, we deem it appropriate to make our position plain to the court.

I.

THE INTENTION OF CONGRESS WAS TO TURN THE MONEY OVER TO THE STATES, NOT TO SCHOOL DISTRICTS.

Counsel for appellee (pp. 4-8) refer to the intention of Congress, but the instances cited show that Congress in each case is dealing directly *with the States*, not with school districts. The *compact* references, cited by counsel (pp. 6-7), to the Washington Enabling Act and to the State Constitution relate to the fundamentals of American Government, republican in form with no distinction in civil or political rights on account of race or color and not to be repugnant to the Constitution of the United States and the principles of the Declaration of Independence, and particularly to the 13th and 14th Amendments to the Federal Constitution. But they have no bearing on this case.

The Washington Enabling Act referred to (p.

7) was construed by the State Supreme Court in *State ex rel. Moore v. Callvert*, 34 Wash. 58, 74 Pac. 1018, from which we quoted in our opening brief (p. 23), the court holding that the disposition of lands granted for six classes of educational institutions was

> "* * * *a question of public policy, which must be determined exclusively by the Legislature.*" (Italics ours.)

Also that

> "*All these institutions are maintained by the state and the grant is simply an asset in the hands of the state to aid it in maintaining them.*" (Italics ours.)

So in the case at bar. Public schools and public roads are maintained by taxation and the federal appropriation is an asset to aid in their maintenance and

> "* * * to be *expended* as the State or Territorial legislature may prescribe, for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated."

Congress declared that the legislature should prescribe who should *expend* the money. The legislature designated the County Commissioners. There is no warrant for the claim of appellee that Congress intended that the School District should expend the money.

II.

Appropriation of Public Funds For Public Purpose Is Not a Gift.

Counsel for appellee (p. 8 and elsewhere) refer to congressional appropriations for education, roads, canals and other improvements as *gifts*. They recognize federal power to appropriate public funds for educational purposes. Respecting public roads, the power of Congress rests in the subdivision of Sec. 8 Art. I, U. S. Constitution authorizing it to establish post offices and post roads. As to canals, its authority is vested in the power to regulate commerce, also found in Sec. 8 of Art. I. An exercise of these powers does not constitute a gift, but an appropriation for authorized public purposes. In the case of *lands*, congressional *grants* may be made to pass *title* directly to the States, instead of by the issuance of patents pursuant to law. But in the case of appropriations, it is sufficient to direct the Secretary of the Treasury to pay certain funds to the state treasurer as provided in the act for authorized public purposes.

A gift is a gratuity. The discharge of functions of government is not.

Parkinson v. State, 74 Am. Dec. 522;
Williamson v. Johnson, 22 Am. St. Rep. 117;
Martin v. Martin, 67 N. E. 1;
Ristine v. State, 20 Ind. 328, 339;

Journal Pub. Co. v. Kenney, 24 Pac. 96;
Forsyth v. Reynolds, 14 L. Ed. 729.

III.

No Trust Status Exists.

Counsel suggest (pp. 10-13) that a trust is created, but they do not point out how. They refer to certain statutes relating to lands, in each of which it appears that Congress dealt directly with the states.

They rely, also, upon the term "grant" as creating a trust. Not so. No appropriation of public land can be made for any purpose, but by authority of an Act of Congress. Title may pass by patent under the public land laws, or by a direct Act of Congress.

U. S. v. Fitzgerald, 10 L. Ed. 785;
Wilcox v. Jackson, ex dem. M'Connel, 10 L. Ed. 264;
Ryan v. Carter, 23 L. Ed. 807.

Their sole reliance is on *American Emigrant Co. v. Wright County*, 24 L. Ed. 912, which we discussed in our opening brief (p. 18). But they have cited no authority contrary to the rule that—assuming a grant with conditions to exist—the authority to enforce the conditions of the grant resides in Congress, and not in the court (for argument and authorities see our opening brief, pp. 14-27).

IV.

THE TRIAL COURT HAD NO JURISDICTION OF THE SUBJECT MATTER OF THE ACTION OR OF THE PARTIES.

Appellee urges (pp. 14-19) that its rights are founded in the federal appropriation Act, that although the Act creates no private trust or public charity, it is still to be construed in accordance with principles applicable to gifts, wills and deeds. This assumption cannot avail appellee for the gift is not to it. Appellee is not a devisee under the will; it is a stranger to the deed, and by like token, it is not recognized in the state statute. Mere assertion of protection under a federal act—without more—will not warrant the assumption of federal jurisdiction. There is no diversity of citizenship here and the construction of the appropriation Act is not necessary to the decision of the case.

The whole matter is determinable solely in virtue of the State Act which directed the County Commissioners to *expend* the money, imposing no powers and duties in that behalf upon school districts, which like counties, as counsel point out (p. 39), are mere arms of the state for the administration of governmental functions.

If the state had not passed its appropriation Act, manifestly appellee could not state a cause of action in any circumstances. How, then, can it now claim that the federal act is necessary to

a decision of the case? We submit that the trial court had no jurisdiction of either subject matter or parties.

V.

THE BILL OF COMPLAINT DOES NOT STATE FACTS SUFFICIENT TO CONSTITUTE ANY GROUND FOR RELIEF.

A.

IT IS A MATTER BETWEEN TWO SOVEREIGNTIES.

In discussing this point, counsel (pp. 19-29) have submitted no argument or authority contrary to the reasoning of the cases cited in our brief (pp. 14-27). Indeed they concede (p. 29) that

> "* * * if the grant allows the state to use the fund in one way or another, at its discretion, and this privilege has been abused, Congress alone can interfere."

Counsel have inadvertently erred in suggesting (pp. 26-27) that *U. S. v. Louisiana*, 32 L. Ed. 66, is distinguishable from the case at bar in that in the *Louisiana* case the money

> "* * * was still in the possession of the government,"

while here it had long since passed to the state, since the court there expressly held (p. 70) that

> "* * * the proceeds of the swamp lands are not subject to a property trust, *either in the*

hands of the United States or in those of the State * * *." (Italics ours.)

It cannot avail appellee to discuss (pp. 29-33) suits against a state, the immunity of a state from certain classes of litigation, or the application of principles of equity to cases of express trusts. These matters are all foreign to the issues in this cae.

Southern Oregon Co. v. U. S. 241 Fed. 16 (C. C. A.) cited by counsel (p. 30) as we pointed out in our brief (p. 21) was a direct action by the Government itself to *forfeit title* to certain lands *granted upon certain conditions.* The Government is not party to the instant suit. Here title to the money has passed from the Government, to be *expended* in the discretion of the state legislature, unimpressed with any property trust, or conditions affecting title.

B.

APPROPRIATIONS.

As we understand counsel's position (pp. 33-34) they concede that if the funds in question had been turned over to a governmental department or official for disbursement, they would be ordinary current appropriations and discretion over their disbursement could not be controlled by the courts.

But, they urge, since Congress turned the funds over to the state to be expended in the dis-

cretion of the legislature for such public purposes, they have lost their character as funds appropriated for authorized public purposes, and have become gifts to be controlled by the courts according to the principles of law relating to gifts, wills, and deeds. We submit that such view is wholly unsound in that it violates the fundamental principles of our government because it accords to the judiciary power to interfere with and control discretion vested in the executive branch of government (see cases cited p. 50 our brief).

Congress might have directed in detail *when, where, how,* and *by whom* the funds should be expended. But it did not. The legislature said *by whom,* but left *when, where* and *how* to the County Commissioners to determine as public necessity and convenience should require.

C.

THE QUESTION OF DELEGATION OF LEGISLATIVE POWER IS NOT IN ISSUE.

Congress left it for the state legislature to prescribe *by whom* the funds should be *expended.* The legislature did so. No delegation of legislative power resulted as urged by counsel (pp. 35-36). Indeed if appellee's position that a trust exists be sound, then the county is powerless to pay any funds to appellee because, under the cases relied on by appellee (p. 35), funds turned over

to the county, to be expended by the County Commissioners *cannot be paid over to appellee to be expended by it.*

This is shown by the opinion in *Coquard v. Chariton County,* 14 Fed. 203, 206, cited by counsel:

> "It may be taken as well-established law that whenever trusts or discretionary powers are to be exercised, the exercise thereof cannot be delegated."

VI.

SCHOOL DISTRICTS CONSTITUTE BUT ONE BRANCH OF THE PUBLIC SCHOOL SYSTEM UNDER THE LOCAL LAW.

Counsel erred in stating (p. 36) that

> "All school property and funds (when they reach the county treasurer) belong to the several school districts and are under the control of school directors, who alone become responsible for their safe keeping and expenditure."

Pierce's 1922 Code, provides:

> "§ 5096. The county superintendent of each county of this state may establish a circulating library for the use and benefit of the pupils of the common schools of such county.
>
> "§ 5097. At the time fixed for the levy of the county tax, the county commissioners

of each county may levy a tax sufficient to carry into effect the provisions of section one of this chapter: Provided, That said tax shall not exceed one-tenth of one mill on each dollar of the assessed valuation of the said county. The proceeds of said tax shall, when collected, constitute a circulating school library fund for the payment of all bills created by the purchase of books and fixtures by the county superintendent.

"§ 5098. The county commissioners shall allow no bill or bills against said fund until it shall have been certified to be correct by the county superintendent.

"§ 5099. The county superintendent shall purchase no books or fixtures for such circulating library until there shall be to the credit of the circulating school library fund sufficient money to pay the purchase price thereof.

"§ 5100. No book shall be placed in a county circulating library unless it has been recommended by the State Board of Education, or the Superintendent of Public Instruction.

"§ 5100a. It shall be the duty of the county superintendent to purchase the books and to enforce such rules and regulations for their distribution, use, care and preservation as he may deem necessary."

Sec. 4721 declares that:

> "The administration of the public school system shall be intrusted to a Superintendent of Public Instruction, a State Board of Education, to regents or trustees for educational institutions, to county superintendents of common schools, to boards of directors and district clerks."

Sec. 4977 provides:

> "For all actual and necessary travel in the performance of their official duties and in attendance on the convention of county superintendents, called by the Superintendent of Public Instruction, county superintendents shall be allowed actual traveling expenses."

Among the powers and duties of the State Superintendent of Public Instruction, he is required § 4724 (subdiv. 19):

> "To perform such other duties as may be required by law."

We submit that school districts do not comprise the whole public school system under the local law, that it is immaterial to the decision of this case what that local law may be, that Congress left it for the legislature to prescribe, that the legislature had plenary power and directed the County Commissioners to expend the funds in their discretion, and that the court cannot control that discretion.

CONCLUSION.

We respectfully submit that the motion and supplemental motion to dismiss the amended bill of complaint should have been granted, that the decision of the Circuit Court of Appeals should be reversed with instructions to dismiss the suit.

Respectfully submitted,

MALCOLM DOUGLAS,
Solicitor for Appellant.

HOWARD A. HANSON,
Of Counsel.

KING COUNTY, WASHINGTON, *v.* SEATTLE SCHOOL DISTRICT NO. 1.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 30. Argued April 13, 1923.—Decided December 3, 1923.

1. A suit is within the jurisdiction of the District Court as a controversy arising under the laws of the United States, Jud. Code, § 24, where the right and title set up by the plaintiff depend upon the construction of an act of Congress. P. 363.
2. The Act of Congress of May 23, 1908, directing that 25% of all money received from each forest reserve shall be paid to the State in which the reserve is situated, "to be expended as the State . . . legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated," does not create a trust, but results in a sacred obligation imposed on the public faith of the donee State. P. 364.
3. The act does not prescribe how the moneys shall be divided as between the two purposes named, but leaves this to the State. *Id.*
4. Where a state law authorizes and directs county commissioners to expend the moneys received by their county, under the above act of Congress, for the benefit of the public schools and public roads thereof, a school district has no standing to call a county to account when more of the funds are used for the one than for the other purpose, since equal division between the two is not contemplated or required by the act, and the rule that a grant to several, without specification of interests, conveys equal interests, does not apply. P. 365.

278 Fed. 46, reversed.

APPEAL from a decision of the Circuit Court of Appeals which affirmed a decree of the District Court in favor of

the School District in its suit against the County for an accounting.

Mr. Howard A. Hanson, with whom *Mr. Malcolm Douglas* was on the briefs, for appellant.

Mr. Henry W. Pennock, with whom *Mr. Dallas V. Halverstadt* was on the brief, for appellee.

MR. JUSTICE BUTLER delivered the opinion of the Court.

The Act of Congress of May 23, 1908, c. 192, 35 Stat. 260,[1] directs that twenty-five per cent. of all money received from each forest reserve during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which the reserve is situated "to be expended as the State . . . legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated;" and it is provided that when any forest reserve is in more than one State or Territory or county the distributive share to each from the proceeds of said reserve shall be proportional to its area therein. A statute of Washington (Laws of 1907, c. 185, p. 406) directs the state treasurer to turn over to the county treasurers the amounts of such money belonging to the respective counties; and provides that "county commissioners of the respective counties to which the money is distributed are hereby authorized and directed to expend said money for the benefit of the public schools and public roads thereof, and not otherwise."

The Secretary of the Treasury paid over to the State the proper amounts for the years from 1908 to 1918, inclusive. A part of the Snoqualmie Forest Reserve is in King County, and the proportionate amounts for these

[1] See Act of March 4, 1907, c. 2907, 34 Stat. 1270.

years, aggregating $20,106.07, were turned over by the State to the county treasurer. For each of the years, 1908, 1916, 1917, and 1918, the county commissioners directed that one-half of the amount be apportioned to the county school fund and one-half to the road and bridge fund; and for each of the years from 1909 to 1915, inclusive, directed that all be assigned to the road and bridge fund. The county treasurer made the distributions as directed. Out of the total amount above mentioned, there was assigned $18,481.43 to the road and bridge fund and $1,624.64 to the county school fund. The latter is $8,428.40 less than one-half the total received by the county. The appellee is one of the school districts of the county and claims to be entitled to such proportion of one-half the amount received in each year by the county as the annual school attendance in the district bore to the total attendance in all the districts of the county. The amounts so claimed make a total of $6,789.22.

This suit was brought by the appellee, Seattle School District No. 1, to have King County and its treasurer declared to be trustees, to require them to account, and to recover the sum so claimed. The complaint set forth the facts substantially as above stated. The county moved to dismiss on the grounds that the court was without jurisdiction and that the complaint failed to state a cause of action. The motion was denied, and, the appellant declining to plead further, a decree was entered in favor of the appellee as prayed; this was affirmed by the Circuit Court of Appeals.

Section 24 of the Judicial Code provides that the district courts shall have original jurisdiction where the matter in controversy arises under the laws of the United States. In this case the right and title set up by the appellee depends upon the act of Congress. There is involved the question whether that act permits the money so received by the county to be expended by the county

commissioners as directed by state legislation, or requires an equal distribution annually for the benefit of public schools and public roads of the county. Appellee contended for the latter construction, and the courts below sustained its claim. If this is not a correct construction of the act appellee has no cause of action. See *Northern Pacific Ry. Co.* v. *Soderberg*, 188 U. S. 526, 528; *Shulthis* v. *McDougal*, 225 U. S. 561, 569. The District Court had jurisdiction.

When turned over to the State, the money belongs to it absolutely. There is no limitation upon the power of the legislature to prescribe how the expenditures shall be made for the purposes stated, though, by the act of Congress, "there is a sacred obligation imposed on its public faith." *Cooper* v. *Roberts*, 18 How. 173, 182; *Alabama* v. *Schmidt*, 232 U. S. 168, 173; *Mills County* v. *Railroad Companies*, 107 U. S. 557, 566; *Hagar* v. *Reclamation District*, 111 U. S. 701, 713. No trust for the benefit of appellee is created by the grant. But, assuming the moneys paid over to the State are charged with a trust that there shall be expended annually one-half for schools and one-half for roads, the appellee has no right to enforce the trust. Congress alone can inquire into the manner of its execution by the State. *United States* v. *Louisiana*, 127 U. S. 182, 185–192; *Mills County* v. *Railroad Companies, supra; Emigrant Co.* v. *County of Adams*, 100 U. S. 61, 69; *Barrett* v. *Brooks*, 21 Ia. 144, 148. See also *Stearns* v. *Minnesota*, 179 U. S. 223, 231. The act does not direct any division of the money between schools and roads. Its language above quoted indicates an intention on the part of Congress that the State in its discretion may prescribe by legislation how the money is to be expended. No distribution to the appellee or any other school district is required. The public schools and public roads are provided and maintained by the State or its subdivisions, and the moneys granted by

the United States are assets in the hands of the State to be used for the specified purposes as it deems best. See *State* v. *Callvert*, 34 Wash. 58, 61.

The rule that, where a grant to two or more persons does not state the interest of each, their estates are presumed to be equal,[2] does not apply. Under the act of Congress, it was competent for the legislature of Washington to authorize county commissioners to expend the money for public schools and public roads. Equal division annually between the two purposes is not required or contemplated by the act. The appellee has no standing to object to the distributions made by the county commissioners.

The decree appealed from is reversed.